

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IRBY CAPITAL, LLC,

Plaintiff,

v.

**THE BURLINGTON INSURANCE
COMPANY,**

Defendant.

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CIVIL ACTION NUMBER:

1:24-CV-

**Removed from Mobile County Circuit
Court, CV 2022-CV-901582**

NOTICE OF REMOVAL

**TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA:**

This Notice of Removal of the Defendant, The Burlington Insurance Company, (“Burlington”) respectfully shows:

1. On or about the 20th day of June 2024, an action was filed against the Defendant/Petitioner in the Circuit Court of Mobile County, Alabama, entitled *Irby Capital, LLC, Plaintiff v. The Burlington Insurance Company, Defendant*, Civil Action No.: 02-CV-2024-901582. (Exhibit “A”, Copies of all pleadings and orders from the state court matter, including copies of the Complaint, Summons and Record of Service).

2. Removal is timely. Service was made upon this Defendant on July 2, 2024. (Exhibit “A”). Removal is filed within thirty (30) days of the date on which this case became removable, and is thus timely. 28 U.S.C. §1446(b).

3. This is a breach of contract action. Plaintiff alleges that Burlington provided a policy of insurance which covered scheduled properties against perils including wind and provided

coverage in the amount of \$8,905,120. Plaintiff further alleges that a number of these properties sustained significant wind damage as a result of Hurricane Sally. (Exhibit “A”, ¶¶ 4 and 6).

4. There is complete diversity of the parties as no plaintiff and no defendant are citizens of the same state. The above-described action is a civil action of which this Court has jurisdiction under the provision of Title 28, United States Code, §1332, and is one which may be removed to this Court by Burlington pursuant to the provisions of Title 28, United States Code, §1441, as amended.

5. For purposes of removal, Plaintiff is a citizen of the state of Alabama. Plaintiff pled that it is “an Alabama limited liability company located at 503 Government Street, Mobile, AL 36602. (Exhibit “A”, Complaint, ¶ 2). 28 U.S.C. §1332(c)(1).

6. Defendant Burlington is a foreign corporation reorganized and existing under the laws of the state of Illinois and maintains its principal place of business in the state of Connecticut. (Exhibit “B”, Affidavit of Kristine L. Gillette). The only summons issued in this case was issued to Burlington. For purposes of removal, Defendant, Burlington is a citizen of the state of Illinois and of the state of Connecticut. 28 U.S.C. §1332(c)(1).

7. The amount in controversy in this case exceeds the jurisdictional minimum for diversity jurisdiction. Plaintiff alleges that Burlington provided a policy of insurance which covered scheduled properties against perils including wind and provided coverage in the amount of \$8,905,120. Plaintiff also alleges that a number of the scheduled properties sustained significant wind damage as a result of Hurricane Sally. (Exhibit “A”, Complaint, ¶¶ 4 and 6). Plaintiff further alleges that Burlington paid Plaintiff \$376,226.37 following its inspections. Plaintiff also alleges that its own inspector valued the total amount of the hurricane related wind damage to be \$4,290,720. (Exhibit “A”, Complaint, ¶¶ 10 and 13). Thus, Plaintiff seeks approximately

\$3,914,494.26 in compensatory damages, exclusive of interest, attorney's fees, court costs, lost income, mental anguish and emotional distress. (Exhibit "A", Complaint, ¶¶ 10 and 13). Burlington disputes that Plaintiff is owed the amount claimed. Therefore, the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs pursuant to 28 U.S.C. §1332(a).

8. Removal is timely as this case was initiated on June 20, 2024, service was made on Burlington on July 2, 2024, and Burlington filed this removal within 30 days of service. 28 U.S.C. §1446(b). There is evidence of sufficient amount in controversy and diversity of citizenship. 28 U.S.C. §1332(c).

9. Contemporaneously with the filing of this Notice of Removal, Burlington has filed a copy of this document with the Circuit Court of Mobile County, Alabama. (Copies of which are attached hereto as Exhibit "C").

WHEREFORE, The Burlington Insurance Company prays that the above action now pending against it in the Circuit Court of Mobile County, Alabama be removed therefrom to this Court.

Respectfully submitted on this 29th day of July, 2024.

/s/ Mark A. Dowdy

D. GREG DUNAGAN (DUNAD5372)

MARK A. DOWDY (DOWDM7115)

Attorneys for Defendant,

The Burlington Insurance Company

OF COUNSEL:

CARR ALLISON

6251 Monroe Street, Suite 200

Daphne, AL 36526

Telephone: (251) 626-9340

Facsimile: (251) 626-8928

gdunagan@carrallison.com

mdowdy@carrallison.com

CERTIFICATE OF SERVICE

I do hereby certify that on this 29th day of July, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following and that I served a copy of the foregoing by electronic mail on the following attorneys of record:

Thomas H. Benton, Jr.
Benton Law Firm, LLC
169 Dauphin Street, Suite 301
Mobile, AL 36602

/s/ Mark A. Dowdy
OF COUNSEL